FILED 1 KAMALA D. HARRIS NFC 11 2012 Attorney General of California 2 MARC D. GREENBAUM Board of Vecational Nursing Supervising Deputy Attorney General and Psychiatric Technicians 3 GILLIAN E. FRIEDMAN Deputy Attorney General 4 State Bar No. 169207 300 So. Spring Street, Suite 1702 5 Los Angeles, CA 90013 Telephone: (213) 897-2564 6 Facsimile: (213) 897-2804 7 Attornevs for Complainant 8 BEFORE THE BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS 9 DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA 10 11 In the Matter of the Accusation Against: Case No. VN 2011-2502 12 LUIZ CARLOS CHACON, ACCUSATION 13 a.k.a. LUIS CARLOS CHACON 1012 1/4 Indiana Street 14 Los Angeles, CA 90023 15 Vocational Nurse License No. VN 241982 16 Respondent. 17 18 Complainant alleges: 19 **PARTIES** 20 1. 21

- Teresa Bello-Jones, J.D., M.S.N., R.N. (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Board of Vocational Nursing and Psychiatric Technicians, Department of Consumer Affairs.
- 2. On or about May 14, 2009, the Board of Vocational Nursing and Psychiatric Technicians (Board) issued Vocational Nurse License No. VN 241982 to Luiz Carlos Chacon also known as, Luis Carlos Chacon (Respondent). The Vocational Nurse License was in full force and effect at all times relevant to the charges brought herein and will expire on June 30, 2013, unless renewed.

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#### **JURISDICTION**

3. This Accusation is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

# STATUTORY PROVISIONS

- 4. Section 118, subdivision (b) provides, in pertinent part, that the expiration of a license shall not deprive the Bureau jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated. Under section 2892.1 of the Code, the Bureau may renew an expired license at any time within four years after the expiration.
  - 5. Section 490 states, in pertinent part:
- "(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.
- "(b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued.
- "(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code."
- 6. Section 2875 provides, in pertinent part, that the Board may discipline the holder of a vocational nurse license for any reason provided in Article 3 (commencing with section 2875) of the Vocational Nursing Practice Act.

7. Section 2878 states, in pertinent part:

"The Board may suspend or revoke a license issued under this chapter [the Vocational Nursing Practice Act (Bus. & Prof. Code, 2840, et seq.)] for any of the following:

- "(a) Unprofessional conduct, which includes, but is not limited to, the following:
- "(f) Conviction of a crime substantially related to the qualifications, functions, and duties of a licensed vocational nurse, in which event the record of the conviction shall be conclusive evidence of the conviction."
  - 8. Section 2878.5 of the Code states:

In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Vocational Nursing Practice Act] it is unprofessional conduct for a person licensed under this chapter to do any of the following:

"(b) Use any controlled substance as defined in Division 10 of the Health and Safety Code, or any dangerous drug as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public, or to the extent that the use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.

"(c) Be convicted of a criminal offense involving possession of any narcotic or dangerous drug, or the prescription, consumption, or self-administration of any of the substances described in subdivisions (a) and (b) of this section, in which event the record of the conviction is conclusive evidence thereof."

#### **REGULATORY PROVISIONS**

- 9. California Code of Regulations, title 16, section 2518.6 states, in pertinent part:
- "(b) A licensed vocational nurse shall adhere to standards of the profession and shall incorporate ethical and behavioral standards of professional practice which include but are not limited to the following:

. . . .

"(4) Abstaining from chemical/substance abuse."

. . .

- "(c) A violation of this section constitutes unprofessional conduct for purposes of initiating disciplinary action."
  - 10. California Code of Regulations, title 16, section 2521, states:

"For the purposes of denial, suspension, or revocation of a license pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a licensed vocational nurse if to a substantial degree it evidences present or potential unfitness of a licensed vocational nurse to perform the functions authorized by his license in a manner consistent with the public health, safety, or welfare."

#### COST RECOVERY

11. Section 125.3 states, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

#### FIRST CAUSE FOR DISCIPLINE

### (Convictions of Substantially Related Crimes)

- 12. Respondent is subject to disciplinary action under section 2878, subdivision (f) and 490, in conjunction with California Code of Regulations, title 16, section 2521, in that Respondent has been convicted of crimes substantially related to the qualifications, functions or duties of a licensed vocational nurse, as follows:
- a. On or about June 8, 2012, after pleading nolo contendere, Respondent was convicted of one misdemeanor count of violating Santa Fe Springs Municipal section 130.07, subdivision (b) [public urination] in the criminal proceeding entitled *The People of the State of California v. Luiz Carlos Chacon* (Super. Ct. Los Angeles County, 2012, No. 2WW01967). The Court placed

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Respondent on 6 months probation, with terms and conditions. The circumstances surrounding the conviction are that on or about April 4, 2012, Respondent urinated in a public place.

b. On or about March 21, 2012, after pleading nolo contendere, Respondent was convicted of one misdemeanor count of violating Vehicle Code section 23152, subdivision (b) [driving while having 0.08% or more, by weight, of alcohol in his blood] in the criminal proceeding entitled *The People of the State of California v. Luiz Carlos Chacon* (Super. Ct. Los Angeles County, 2012, No. 2EA01023). The Court sentenced Respondent to serve 96 hours in Los Angeles County Jail and placed him on 36 months probation, with terms and conditions. The circumstances surrounding the conviction are that on or about November 30, 2011, during a traffic stop by the California Highway Patrol Department, Respondent was contacted. Respondent was found to have been weaving from side to side. While speaking to Respondent, a strong odor of an alcoholic beverage was detected. Respondent was observed to have red, watery eyes and slurred speech. Respondent admitted to drinking 3 1/2 bottles of Newcastle beer earlier that evening. While at the scene, Respondent submitted to a Preliminary Alcohol Screening Test (PAS) that resulted in a breath-alcohol content level of 0.151% on the first reading and 0.153% on the second.

### SECOND CAUSE FOR DISCIPLINE

# (Dangerous Use of Alcohol)

13. Respondent is subject to disciplinary action under section 2878, subdivision (a), as defined in section 2878.5, subdivision (b), in that, Respondent used alcoholic beverages to an extent or in a manner dangerous or injurious to himself, any person, or the public. Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraph 12, subparagraph (b), as though set forth fully.

# THIRD CAUSE FOR DISCIPLINE

## (Conviction Involving the Consumption of Alcohol)

14. Respondent is subject to disciplinary action pursuant to section 2878, subdivision (a), as defined in section 2878.5, subdivision (c), in that, Respondent was convicted of a crime

involving the consumption of alcohol. Complainant refers to and by this reference incorporates, the allegations set forth above in paragraph 12, subparagraph (b), as though set forth fully.

### **DISCIPLINARY CONSIDERATION**

- In order to determine the degree of discipline, if any to be imposed on Respondent, 15. Complainant alleges, as follows:
  - On or about March 24, 2010, the Board issued a Notice of Warning to Respondent. a.
- b. On or about January 19, 2010, after pleading guilty, Respondent was convicted of one misdemeanor count of violating Vehicle Code section 23152, subdivision (b) [driving while having 0.08% or more, by weight, of alcohol in his blood] in the criminal proceeding entitled *The* People of the State of California v. Luis Carlos Chacon (Super. Ct. Los Angeles County, 2010, No. 0JB00511). The Court placed Respondent on 3 years probation, with terms and conditions. The circumstances surrounding the conviction are that on or about November 21, 2009, during an investigation by the California Highway Patrol Department, Respondent was contacted. While speaking to Respondent, the officer detected an odor an alcoholic beverage emitting from his person. He was observed to have bloodshot, watery eyes and his speech was slurred, mumbled, and slow. Respondent was subsequently arrested for violating Vehicle code section 23152, subdivision (a) [driving under the influence of alcohol or drugs] and Vehicle code section 23152, subdivision (b) [driving while having 0.08% or more, by weight, of alcohol in his blood]. During the booking procedure, Respondent submitted to a blood test that resulted in a blood-alcohol content level of 0.15%.

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# **PRAYER** 1 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, 2 and that following the hearing, the Board issue a decision: 3 1. Revoking or suspending Vocational Nurse License No. VN 241982, issued to 4 Respondent; 5 2. Ordering Respondent to pay the Board the reasonable costs of the investigation and 6 7 enforcement of this case, pursuant to section 125.3; and Taking such other and further action as deemed necessary and proper. 3. 8 9 DEC 1 1 2012 DATED: 10 M.S.N., R.N. Executive Officer 11 Board of Vocational Nursing and Psychiatric Technicians Department of Consumer Affairs 12 State of California Complainant 13 14 15 16 17 LA2012506975 511700616.doc 18 Rev. (10/1/12) 19 20 21 22 23 24 25 26 27

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